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SUPREME COURT OF THE UNITED STATES.

No. ~~241.~~ 172.

SAMUEL H. TURRILL AND CHARLES WORMLEY, PL'FFS IN ER.,

vs.

THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 241.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the seventh circuit and district of Michigan, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said circuit court of the United States for the seventh circuit and district of Michigan, before you, between Samuel H. Turrill and Charles Wormley, and the Michigan Southern and Northern Indiana Railroad Company, a manifest error hath happened, to the great damage of the said Samuel H. Turrill and Charles Wormley, as by their complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of
[SEAL.] the said Supreme Court of the United States, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

WM. D. WILKINS, *Clerk*,
By JNO. WINDER, *Deputy Clerk.*

2 SAMUEL H. TURRILL & CHARLES WORMLEY, pl'ffs in error,
vs.
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY, def't in error.
} Writ of error.

The execution of this writ appears in the schedule hereunto annexed.

WM. D. WILKINS, *Clerk*,
By JNO. WINDER, *Dep'y Clerk.*

3 Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court-room in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and sixty-two—

In the case wherein Samuel H. Turril & Charles Wormly are plaintiffs, and the Michigan Southern & Northern Indiana Railroad Company are defendants.

DISTRICT OF MICHIGAN, *ss:*

Be it remembered that on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and sixty-one, the said plaintiffs came into the court aforesaid, before the judges thereof, and filed their declaration against the said defendants; which said declaration is in the words and figures following, to wit:

Declaration.

The circuit court of the United States for the seventh circuit and district of Michigan.

DISTRICT OF MICHIGAN, *ss:*

Of the twenty-fifth day of January, A. D. 1861.

Samuel H. Turril and Charles Wormly, who are citizens of the State of Illinois, by D. C. Holbrook, their attorney, come and file this their declaration, as commencement of suit, and complain of the Michigan Southern and Northern Indiana Railroad Company, a corporation created by virtue of and existing under the laws of the State of Michigan, in a plea of trespass on the case: For that one
4 Joseph D. Cawood, of the city of Marshall, in the State of Michigan, was the original and first inventor of a new and useful improvement in repairing railway bars, to wit: "An anvil or swage block, for the purpose of welding up and reforming the ends of railroad rails when they have exfoliated or become shattered from unequal wear occasioned by the inequalities of the road," in all as set forth in his specifications and drawings in the letters patent hereinafter mentioned and fully described, the same being a new and useful improvement in the repairing of railway bars, as aforesaid, which was not known or used before his said invention, and which was not at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance. And the said Cawood, being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the ninth day of September, eighteen hundred and fifty-six, upon due application therefor, did obtain letters patent therefor, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid, whereby there was secured to him, his heirs, administrators, or assigns, for the term of fourteen years from and after the date of the patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as by the said letters patent, in court to be produced, will more fully appear. And the said plaintiffs further say that the said Cawood exercised and enjoyed the right secured to him by the said letters patent from the said ninth day of September, 1856, to the eleventh day of November, 1856, on which last-mentioned day the said Cawood,
5 by his deed of that date, for a valuable consideration, conveyed to one Francis W. Sherman, one-third of his right and claim

in said letters patent. And also on the first day of June, 1857, said Cawood, by his deed, conveyed, for a valuable consideration, to said Francis W. Sherman and one George Johnson, each one undivided fourth, and to one Darius Clark and to one Emmons Clark, each one undivided eighth part rights under said patent, reserving to himself one undivided fourth of his right and claim in the said letters patent; and also excepting therefrom and from said conveyance, the rights theretofore conveyed to the Michigan Central Railroad Company, New York Central Railroad Company, Cincinnati, Hamilton, and Dayton Railroad Company, Galena and Chicago Union Railroad Company, Chicago and Rock Island Railroad Company, Indianapolis, Pittsburg, and Cleveland Railroad Company, Belle Fontain and Indiana Railroad Company, Little Miami, Columbus, and Xenia Railroad Company, to make and use said invention and improvement for their own use and roads; and also excepting the rights to make, and vend to others to be used, the said invention in the State of Wisconsin. And further, that on said June first, 1857, the said Francis W. Sherman and George Johnson, by their joint deed of that date, for a valuable consideration, reconveyed and reassigned to the said Cawood all their right and claim in the said letters patent. And further, that said Darius Clark and Emmons Clark, on the twenty-first day of September, 1858, by their joint deed of that date, conveyed to one David H. Williams, for a valuable consideration, all their right and claim in said letters patent. And further, that the said Francis W. Sherman, on the first day of March, 1859, by his deed of that date, for a valuable consideration, conveyed all his right and claim in said letters patent to one Benoni S. Gleason. And further, that the said David H. Williams, on
6 the tenth day of March, 1859, by his deed of that date, for a valuable consideration, conveyed all his right and claim in said letters patent to said Francis W. Sherman. And further, that the said Francis W. Sherman, on the tenth day of March, 1859, by his deed of that date, for a valuable consideration, conveyed to one Benoni S. Gleason all his right and claim derived under the last-mentioned deed (of David H. Williams to him) in the said letters patent. And further, that the said Francis W. Sherman, on the eleventh day of March, 1859, by his deed of that date, conveyed, for a valuable consideration, to the said Benoni S. Gleason all his interest in said letters patent derived by the assignment of said David H. Williams to him, and also of the assignments to him, said Sherman, and others above referred to bearing date June 1st, 1857. And further, that the said Benoni S. Gleason and Joseph D. Cawood and George Johnson, on the eighteenth day of October, 1859, by their joint deed of that date, for a valuable consideration, conveyed to William H. Dunning and Charles Wormly, one of the plaintiffs herein, all their right and claim in said letters patent. And further, that the said William H. Dunning and the plaintiff Charles Wormly, on the 23d day of August, 1860, by their joint deed of that date, for a valuable consideration, conveyed to the plaintiff, Samuel H. Turril, the fifty-five per cent., meaning thereby fifty-five one-hundredths part interest in said letters patent, excepting the right to make, vend, and use said invention and

improvement in the State of Wisconsin and California. And further, that the said William H. Dunning, on the twenty-third day of August, 1860, by his deed of that date, for a valuable consideration, conveyed to the said plaintiff Wormly all his right and claim in the said letters patent, as fully appears by said several deeds of assignment duly
7 executed and recorded, and in this court to be produced, will more fully appear; whereby said plaintiffs became possessed of the entire and sole right and power in them and their assigns, to make, use, and vend to others to be used, the said invention and improvement, except as aforesaid excepted, for repairing railway bars.

And the said plaintiffs say that from the time of the said conveyances and assignments to them as aforesaid, hitherto the said exclusive right has been and now is of great value, to wit, of the value of $50,000. Yet the said defendants, well knowing the premises, but contriving to injure the plaintiffs, did afterwards, on the 24th day of August, 1860, during the said term of fourteen years and before the filing of this declaration, at the place aforesaid, to wit, the district of Michigan, unlawfully and wrongfully, and without the consent or allowance and against the will of the plaintiff, make, use, and vend the said invention and improvement, in violation and infringement of the exclusive right so secured to the plaintiff as aforesaid, and contrary to the form of the statute of the United States in such case made and provided, whereby the plaintiffs have been greatly injured and deprived of great profits and advantages, which they might and otherwise would have derived from said invention, and have sustained actual damage to the amount of ten thousand dollars; and by force of the statute aforesaid, an action hath accrued to them to recover the said actual damage and such additional amount, not exceeding in the whole three times the amount of said actual damage, as the court may see fit to order and adjudge. Yet the said defendants, though requested, have never paid the same or any part thereof to the plaintiff,
8 but have refused and yet refuse so to do.

D. C. HOLBROOK,
Pl'ffs' Att'y.

Afterwards, to wit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one, the said defendants, by Newberry, Pond & Russell, their attorneys, filed their plea to said declaration, which said plea is in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and district of Michigan.

SAMUEL H. TURRIL & CHARLES WORMLY, plaintiffs,
vs.
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY, defendants.

And the said defendants, by Newberry, Pond & Russell, their attorneys, come and defend the wrong and injury, where, &c., and say that they are not guilty of the said supposed grieviances above laid to

their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this they, the said defendants, put themselves upon the country.

(Signed) NEWBERRY, POND & RUSSELL,
Defendants' Attorneys.

And accompanying said plea the defendants filed notices of special matter, which said notices are in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit and district of Michigan.

SAMUEL H. TURRIL & CHARLES WORMLY
vs.
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY.

SIR: You will please take notice that, in addition to the plea
9 heretofore filed in the above entitled action, the defendants above named will, at the trial of said action, put in evidence the following special matter, that is to say: That anterior to the alleged discovery or invention by Joseph D. Cawood of the thing patented in the letters patent, upon which this action is brought, the same, or substantial and material parts thereof claimed as new, were described in the following named public works.

The Cyclopædia or Universal Dictionary of Arts, Sciences, and Literature, by Abraham Rees, D. D., F. R. S., F. L. S., S. Amer. Soc. First American edition, article "Forging."

Treatise on the Progressive Improvement and Present State of the Manufactures in Metal, volume 1, Iron and Steel. London. Printed for Longman, Brown, Green and Longmans, Paternoster Row, and John Taylor, Upper Gower street, 1847. Page 215, figure 72.

The Practical Metal Worker's Assistant: By Oliver Byrne, Philadelphia: Henry Cary Baird, 1851, and particularly at page 25, (figure 8,) 26, (figures 9, 10, 11, and 12,) 35, (and figures 16 and 17 on said page 35,) 60 and 61, (figure 67,) of said public work.

Also in letters patent of the United States issued to G. H. Richards, assignor to C. G. Plimpton, Sept. 14, 1852, for improvements in forging machines.

And also that the said Joseph D. Cawood was not the original and first inventor or discoverer of the said thing patented in said letters patent, or of any substantial or material part thereof claimed as new, but that previous to any invention, knowledge, or use thereof, or of any part thereof, by the said Cawood, the same, and every substantial and material part thereof, was used at Marshall, Michigan, and that a knowledge of such use at said Marshall was possessed by James
10 McLellan, of said Marshall; Troy, New York, and that a knowledge of such use at said Troy was possessed by William Burden, of said Troy; Howell Works, Monmouth county, New Jersey, and

that a knowledge of such use at said Howell Works was possessed by Frederick Stokey, of said Howell Works; by James P. Smith, of Jamesburg, New Jersey; Alfred H. Smith, of Jamaica, Long Island, in the State of New York; and Joseph McNinney, of Squan, Monmouth county, New Jersey, and others, which said persons the said defendants intend to prove at said trial to have possessed such prior knowledge of said thing patented, and said substantial and material parts thereof, at the places aforesaid.

And also that said thing patented was in public use, with the consent and allowance of the said Cawood, for more than two years prior to his application for a patent therefor. And also that the said Cawood surreptitiously or unjustly obtained the said letters patent for that which was, in fact, invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same.

Dated September 12th, 1861.

Yours, &c.,

(Signed) NEWBERRY, POND & RUSSELL,
Def'ts' Att'ys.

To D. C. HOLBROOK, Esq.,
Pl'ffs' Att'y.

United States circuit court, district of Michigan.

SAMUEL H. TURRIL & CHARLES WORMLY
vs.
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY.

SIR: You are hereby notified that in addition to the special
11 matter of defence in this action which the above-named defendants will put in evidence at the trial hereof, and of which you have heretofore been notified, the said defendants will further put in evidence at said trial and rely upon the following: That anterior to the alleged invention or discovery by the before-named Joseph D. Cawood of the before-referred-to device mentioned in the said letters patent upon which this action is brought, and anterior to his alleged invention or discovery of any substantial or material part thereof, the same was, and substantial and material parts thereof were described, contained, represented, and made public in the following named letters patent, respectively, and the drawings respectively thereto annexed and forming a part of the same: Letters patent of the United States issued on the 31st day of December, 1845, to Samuel G. Reynolds, of Bristol, in the State of Rhode Island, for a "machine for heading and pointing pins;" letters patent of the United States issued on the 3rd day of September, 1846, to Thomas W. Harvey, of the city and State of New York, for a "machine for heading screw blanks;" letters patent of the United States issued on the 26th day of December, 1848, to William Grant, of Boston, in the State of Massachusetts, for a "bolt-heading machine;" letters patent of the United States issued on the 8th day of May, 1849, to Davis L. Weather-

head, of Providence, in the State of Rhode Island, for an "improved method of constructing and operating the header in bolt machines;" letters patent of the United States issued on the 18th day of June, 1850, to Ammi M. George, of Nashua, in the State of New Hampshire, for a "spike machine;" letters patent of the United States issued on the 16th day of July, 1850, to Moore Hardaway, of
12 Troy, in said State of New York, for a "spike machine;" letters patent of the United States issued on the 30th day of July, 1850, to William E. Ward, of Port Chester, in said State of New York, for an improved "bolt and rivet machine;" letters patent of the United States issued on the 20th day of August, 1850, to John Van Brocklin, of Middleport, in said State of New York, for an "improvement in machinery for heading bolts, rivets," &c.; letters patent of the United States issued on the 23d day of December, 1851, to Nathan Starks, of Albany, in said State of New York, for an "improvement in bolt-heading machinery;" letters patent of the United States issued on the 4th day of March, 1856, to George Woodward, of Brunswick, in the State of Maine, for an "improved machine for heading bolts." And also that anterior to the alleged invention or discovery by the said Cawood of the said device, or of any material or substantial part, or of any part thereof, the same, and material and substantial parts of the same, were known to Henry Asseltyne, who now resides at Swanton, in the State of Vermont; J. P. Sherwood, who now resides at Fort Edward, in said State of New York; H. J. Wilson, who now resides at Chicago, in the State of Illinois; George L. Whitney, who now resides in said Boston; George S. Griggs, who now resides at Roxbury, in said State of Massachusetts; Robert H. Eddy, who now resides at said Boston; James Whitcomb, who now resides at Watertown, in said State of New York; James R. Sweeney, who now resides at said Watertown; George Woodward, who now resides at Brunswick aforesaid; and to George Richards, who now resides at Roxbury aforesaid, and to Edwin Garfield, who now resides at Hartford, in the State of Connecticut. And that said device, and material and substantial parts thereof, were used
13 by each of said last-mentioned eleven persons, respectively, at their respective above-mentioned places of residence, anterior to any invention or discovery by said Cawood of any part thereof. And said defendants will at said trial prove that all of said last-named eleven persons had such prior knowledge of said device, and of material and substantial parts thereof.

Dated Dec. 8, 1861.

Yours, &c.,

(Signed) NEWBERRY, POND & RUSSELL,
Att'y for Def'ts.

To D. C. HOLBROOK, Esq., *Att'y for Pl'ffs.*

United States circuit court, district of Michigan.

SAMUEL H. TURRIL AND CHARLES WORMLY
versus
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

SIR: You will please take notice that, in addition to the special matters of defence referred to in the two notices heretofore served upon you on the part of the defendants in this action, the said defendants will, at the trial hereof, prove that, anterior to the alleged invention or discovery by Joseph D. Cawood of the thing claimed and alleged to be patented to him in and by the letters patent referred to in the declaration and said two notices herein, the same, and every material and substantial part thereof, was described in the following named public works, and in the hereinafter mentioned letters patent, that is to say: In the "Transactions of the Society Instituted at London for the Encouragement of Arts, Manufactures, and Commerce," volume 48, London, 1831, and particularly at the article commencing at page 250 and extending through pages 259, 260, and 261 of said public work; in the "Technological Encyclopedia," by Johann Joseph Prectell, volume 2 of plates, plates 336, 337, and 338, Stuttgard, 1846, the said public works being
14 in the German language; in Holtzapffel's "Turning and Mechanical Manipulation," volume 2, London, 1847, and specially at pages 858, 859, and 860 of said work; and in letters patent granted in England A. D. 1846 to William Church for "machinery for stamping, flattening, and shaping metals," &c., number 11, 197, and especially at figures 12, 13, 22, 28. 29, 30, and 34 of the drawings annexed thereto, and the text of the specifications thereof descriptive of said figures.

Dated Jan'y 4, 1862.

Yours, &c.,
(Signed) NEWBERRY, POND & RUSSELL,
Att'ys for Def'ts.

To D. C. HOLBROOK, Esq., *Att'y for Pl'ffs.*

In the circuit court of the United States for the seventh circuit and district of Michigan.

SAMUEL H. TURRIL AND CHARLES WORMLY
versus
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

SIR: Please take notice that, in addition to all other special matters of defence of which you have heretofore been notified herein, the defendants above-named will, at the trial of this action, give in evidence that, anterior to the alleged discovery or invention by the before-named Joseph D. Cawood of the thing alleged to be patented in the letters patent upon which this action is brought, the same, or substantial and material parts of the same, were used at the city of Cincinnati, in the State of Ohio, and that a knowledge of such use thereof at said Cincinnati, so as aforesaid anterior to said alleged invention by said

Cawood, was possessed, and will be proved by one Greenleaf, whose first name is not known to these defendants, but who now re-
15 sides at Indianapolis, in the State of Indiana, and is in charge of a locomotive or repair shop at said Indianapolis; and also that the same thing, alleged to be patented as aforesaid, and every material and substantial part of the same, was used at Tonawanda, in the State of New York, long anterior to any alleged invention or discovery thereof, or of any part thereof, by said Cawood, and that a knowledge of such use at said Tonawanda was possessed, and will be proved, by one Hovey, who resides at Cleveland, in the State of Ohio, and is at present master mechanic of the Cleveland and Pittsburg railroad; and also that the said Joseph D. Cawood was not the original and first inventor or discoverer of the thing patented in said letters patent, or alleged to be therein patented, or of any substantial or material part thereof, but that previous to any invention, knowledge, or use thereof, or of any part thereof, by the said Cawood, the same, and every substantial and material part of the same, was used at Marshall, in the State of Michigan, and that anterior to said alleged invention or discovery thereof, or of any part thereof, by the said Cawood, the said use thereof, at said Marshall, and the said alleged invention or discovery, was known to many persons residing at said Marshall, and among others to Amos Wilson, who now resides at said Marshall; to Joseph J. Etheridge, who now resides at said Marshall; to Alexander McKinley, who now resides at said Marshall; to W. Primble, who now resides at said Marshall; to William Duthi, who now resides at Lexington, in the said State of Michigan; and to Levi Wilson, who now resides at Peoria, Illinois, by which said last-named persons, among others, said defendants will, at said trial, prove said prior use, at said Marshall, of said alleged invention or discovery; and also that the said Cawood surreptiously or unjustly ob-
16 tained the said letters patent for that which was, in fact, invented or discovered by another, to wit, one James McLellan, who, in the years 1852 and 1853, resided at said Marshall, and who was using reasonable diligence in adapting and perfecting the same; and also that, anterior to the said alleged discovery or invention by said Cawood of said thing alleged to be patented in and by said letters patent, the same, and every material and substantial part of the same, was described in the Technological Encyclopedia, by Johann Joseph Prectell, published at Stuttgard in 1846, and particularly at plates 336, 337, and 338, and pages 104 to 131, both inclusive, of said work; and also that the said Cawood surreptitiously or unjustly obtained the said letters patent for that which was, in fact, invented or discovered by others, to wit, the said McLellan, William Duthie, and Joseph J. Etheridge, who all resided at said Marshall in the years 1852 and 1853, and were using reasonable diligence in adapting and perfecting the same.

Dated Jan'y 9, 1862.

Yours, &c.,

(Signed) NEWBERRY, POND & RUSSELL,
Att'ys for Def'ts.

To D. C. HOLBROOK, Esq., *Pl'ffs' Att'y.*

United States circuit court, district of Michigan.

CHARLES WORMLY AND SAMUEL H. TURRIL
versus
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

SIR: Take notice that, at the trial of this action, the above-named defendants will offer evidence that, anterior to the alleged invention or discovery by the certain Joseph D. Cawood named in the letters patent, upon which this action is brought, of the thing patented, or alleged to be patented, under or by said letters patent, or of
17 any substantial or material part thereof, the same, and material and substantial parts of the same, were known and used by many persons at Springfield, in the State of Massachusetts; and that among the persons who so, as aforesaid, anterior thereto, possessed such prior knowledge of said alleged thing patented, and of said material and substantial parts thereof, at said Springfield, and of the use of the same at said Springfield, and who themselves also used the same at said Springfield, are Harris B. Johnson and Francis Chapin, who both now reside at said Springfield; and Thomas Warner, who now resides at Millbury, in the said State of Massachusetts. And you are hereby notified that at said trial said defendants will prove the above-stated facts and circumstances by said named persons, or some of them.

Dated Feb. 4, 1862.

Yours, &c.,

ATT'YS FOR DEF'TS.

To D. C. HOLBROOK, Esq., *Att'y for Pl'ffs.*

And now, at this day, to wit, in the term of June, in the year of our Lord one thousand eight hundred and sixty-two, come the parties aforesaid, by their respective attorneys aforesaid, and having put themselves upon the country for the trial of the issue joined as aforesaid, therefore let a jury come thereof, by whom, &c., who neither, &c., because as well the said plaintiffs as the said defendants have put themselves upon the country; and the jurors of that jury, of whom mention is made, to wit, Henry M. Lacroix, Edward M. Kingsbury, Samuel R. Kingsley, David Gardner, William W. Anderson, Richard Willits, Edgar Howard, Chauncey Canfield, William W.
Wight, Benjamin F. Knapp, George W. Howe, and Allen
18 Warren, who were elected, tried, and sworn well and truly to try the issue joined between the parties aforesaid, and after hearing the evidence adduced, and receiving the charge of the court, say they find defendants are not guilty of the grieviances laid to their charge in the plaintiffs' declaration in manner and form as they stand charged therein. Therefore, it is considered that the said Samuel H. Turril and Charles Wormly take nothing by their said bill, and that the said Michigan Southern and Northern Indiana Railroad Company do go thereof without day, &c. And it is further considered by the court here that the said Michigan Southern and Northern Indiana

Railroad Company do recover against the said Samuel H. Turril and Charles Wormly the sum of nine hundred and fifty-six dollars and fifty-four cents, for their costs and charges by them about their defence in this behalf laid out and expended by the court, now here, adjudged to the said Michigan Southern and Northern Indiana Railroad Company, and with their assent, and that the said Michigan Southern and Northern Indiana Railroad Company have execution thereof, &c.

Judgment rendered July 17th, A. D. 1862.

(Signed) WM. D. WILKINS, *Clerk.*

19 In the circuit court of the United States for the eighth circuit and district of Michigan.

SAMUEL H. TURRILL AND CHARLES WORMLEY, plaintiffs,
against
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY, def'ts.

The issue in this cause coming on to be tried, and a jury being duly empannelled and sworn in pursuance of the statute in such case made and provided, thereupon the said plaintiffs produced in evidence, read, and exhibited to the jury a certified copy of the letters patent mentioned in the plaintiffs' declaration, with the specifications and drawings, and which copy is hereto annexed and marked Exhibit "A," and the whole thereof is made a part of this bill of exceptions. The existence of the defendant as a body corporate as alleged in plaintiffs' declaration, and that the plaintiffs were the assignees of the said Joseph D. Cawood of said letters patent, as alleged in said declaration, was admitted in open court by defendants on the trial of said issue. The plaintiffs also introduced evidence to said jury tending to show user by said defendant, as alleged, of the machine described in said letters patent, specifications. and drawings, and evidence tending to show the damages sustained by plaintiffs by such user.

Thereupon the plaintiffs rested.

The defendant then adduced in evidence to the jury certain models of machines, to wit, of an angle-iron machine, (so called,) an anchor machine, (so called,) a bayonet machine, (so called,) and a copy of an English patent granted to one Church, with the specifications
20 and drawings annexed, which were known prior to the said invention of the said Cawood machine, and, in addition thereto, also adduced evidence to show, and it was admitted by the plaintiffs, that moveable press-blocks, in combination with faces of various shapes and used for various purposes, were older than the alleged invention of Cawood, the patentee.

The defendant also introduced evidence for the purpose of showing that said Cawood was not the inventor of said machine for which his said patent was obtained.

The evidence being closed, and counsel having addressed the jury, the court thereupon charged the jury, verbally in part and in writing, in the words following, to wit:

In the view which the court takes of the case, there will be no question of fact for you to decide. According to the construction which the court has heretofore given to the patent, and which it now repeats, the patentee claims as his invention "the moveable press-block '*E*,' having its edge formed to the side of the rail 'G,' in combination with another block, 'D,' the moveable blocks to be operated by two cams, or in any other convenient manner." The specifications shew that the block "D" is fixed and to be a part of the anvil or swage-block, in combination with which, as well as with the fixed block, the moveable block is to be used. Moveable press-blocks in such combinations, with faces of various shapes, and used for various purposes, it is clearly proved and frankly admitted, are greatly older than the alleged invention of the patentee. The models exhibited in evidence of the "angle-iron machine," the "anchor machine," the "bayonet machine," and those made from the descriptions contained in the English patent of Church, are only some of the examples of their use and application. The patentee
21 therefore claims that of which he is not the inventor. This fact is fatal to the patent, and entitles the defendant, as matter of law, to your verdict.

If it be said that the claim is for the shape of the faces of the blocks, and the uses to which they are to be applied, the answers are:

1st. A mere change of form is not a patentable subject.

2d. The use of a machine or invention for a new purpose is also not patentable.

3d. It was the duty of the patentee to describe clearly what he claims as his invention, so that it might be distinguished without doubt or difficulty from everything else to be used in connection with it. This has not been done. If the limited construction here under consideration be deemed the correct one, still this objection would be fatal, and your verdict the same. We are, however, satisfied that the true construction is the more comprehensive one, and that patentee claims the moveable block in combination with the fixed one, and that the shape and proportions of the cheeks are only incidents and matters of detail.

This difficulty has doubtless arisen from the fact that the inventor and the draftsman of the specifications were not aware of the prior knowledge and use of such a mechanical devise, and hence made the claim broader than the law and the facts will warrant, and liable to a fatal objection.

This instruction renders it unnecessary to advert to the other points which have been argued, and will terminate your labors.

Thereupon the following exceptions were then taken by the plaintiffs:

First. That to so much of said charge stating that the
22 "moveable press-blocks in such combination, with faces of various shapes, and used for various purposes, being greatly older than the alleged invention of the patentee, was fatal to the patent, and entitled the defendant, as a matter of law, to the verdict of the jury," the said plaintiffs excepted.

Second. To so much of said charge as states that "in the view

which the court takes of the case, there would be no question of fact for the jury to decide," the plaintiffs excepted.

Third. That to so much of said charge as states "that the said (Cawood) patentee had not described clearly what he claims in his invention," the plaintiffs excepted.

Fourth. To so much of said charge of the court construing the invention of said patentee as says the patentee claims merely the moveable press-blocks in combination with the fixed one, and that the shape and proportion of the cheeks are only incident and matters of detail, the plaintiffs excepted.

Fifth. The plaintiff requested the court to charge the jury that the invention patented consisted of the moveable press-block and the block D, in combination with the anvil or swage-block B, described in said specification; which request the court refused to grant. Thereupon the plaintiff excepted to such refusal.

And as the matters herein stated do not appear of record in said cause, at the request of the plaintiffs this bill of exceptions is
23 now signed and sealed by the court, that the same may be made a part of said record, this seventeenth day of July, A. D. 1862.

ROSS WILKINS,
Dist. Judge.

24 *The U. States Patent Office to all persons to whom these presents shall come, greeting:*

This is to certify that the annexed is a true copy from the records of this office of letters patent granted to Joseph D. Cawood, Sept. 9th, 1856, for "imp't in repairing railway bars," also of the "file wrapper" in said application.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-seventh day of July, in the year of our Lord one
[SEAL.] thousand eight hundred and sixty-one, and of the independence of the United States the eighty-sixth.

D. P. HOLLOWAY,
Commissioner.

25 No. 15687. *The United States of America, to all to whom these letters patent shall come, greeting:*

Whereas Joseph D. Cawood, of Marshall, Mich., has alleged that he has invented a new and useful improvement in repairing railway bars, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said

improvement and praying that a patent may be granted for that purpose—

These are therefore to grant, according to law, to the said Joseph D. Cawood, his heirs, administrators, or assigns, for the term of fourteen years from the ninth day of September, one thousand eight hundred and fifty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Cawood, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this ninth day of September, in the year of our Lord one thousand eight
[L. S.] hundred and fifty six, and of the independence of the United States of America the eighty-first.

GEO. C. WHITING,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

C. MASON,
Commissioner of Patents.

26 The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Joseph D. Cawood, of the town of Marshall, county of Calhoun, and State of Michigan, have invented a new and useful improvement in the common anvil or swedge-block for the purpose of welding up and reforming the ends of railroad rails when they have exfoliated or become shattered, from unequal wear, occasioned by the inequalities of the road, (six inches or so of the extreme end of the rail being frequently destroyed, while the remainder is perfectly sound;) and I do hereby declare that the following is a full, clear, and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part in this specification and giving a perspective view of the machine:

A representing the bed-sill on which the anvil is placed; B the anvil or swedge-block of cast iron; C C recesses, or dies across the face, the shape of the side of the rail; D solid block, making a part of anvil, with its side shaped to the side of the rail, while placed in its natural position; E a movable press-block held down to anvil by dovetail tongues on the anvil and grooves in the movable press-block, and operated by two eccentric cams, F, back and forth, in a longitudinal direction, to press the rail together while forming its end, and with sufficient travel to extricate the rail without altering its vertical position; G a rail of the T form, in its position, between the press blocks.

27 I usually make my improved anvil and swedge-block of cast iron between four and five feet long and 16 inches across the face, with two forms or recesses C C at one end, right and left, of a form corresponding with the side of the rail; close to these is cast a raised block D nearly as high as the rail, and with its farthest edge also shaped to fit the side of the rail when it lays across the anvil in its natural position. Next this I attach to the face of the anvil, by dovetail tongues and grooves, or any other convenient manner, what I call a movable press-block E, with a similar but reverse-shaped edge, laying opposite the other so as to enclose the rail between the two, as in the jaws of a vice. This block I work by two eccentric cams F on a shaft, which is attached to the anvil by two standards H H, with bearings I I, either cast on or bolted to the edge of the same, so that half a turn of the crank will move the press block over a space a little more than the extreme width of the rail. The mode of using this machine is extremely simple and effective. A piece of iron (being of a size suitable to the deficiency of the rail) having been prepared and put in the fire, the rail being suspended by its middle to the level of the anvil, is brought to a welding heat, and then sung round from the fire into the space between the two blocks, where it is, by a half turn of the crank, pinched together by means of the cams F; the welding piece is then laid on the top of the rail and welded to the rail in the usual way, and levelled up and shaped by a swedge, held by the smith, of the form of that section which projects above the blocks, thus accomplishing at one heat what usually requires three or more; should any imperfections remain, which is not usual if the first operation is properly gone through with, they can be removed by proper hand swedges after placing the rail in
28 the recesses C C for that purpose. I do not claim the anvil-block nor its recesses; but what I do claim as my invention, and desire to secure by letters patent, is the movable press-block E, having its edge formed to the side of the rail G, in combination with another block D, with its edge of a similar but reversed form, (the movable blocks to be operated by 2 cams, or in any other convenient manner,) for the purpose of pressing between them a T or otherwise shaped rail, thereby greatly facilitating the difficult operation of welding and renewing the ends of such rails after they have been damaged, in the manner herein described and set forth.

JOSEPH D. CAWOOD.

Witnesses:
GEORGE JOHNSON.
JAMES A. WAY.

29 No. 15687.

Joseph D. Cawood, of Marshall, county of Calhoun, State of Michigan.

Anvil and swedge-block rec'd March 22, 1853.
Petition " " "
Affidavit " " "
Specification " " "

2 drawings received March 22, 1853.
Model " " "
1 cert. dep., $30" " "
Cash
2 examined Aug. 26, '56, E. Foreman.
Issue—Shugert—Aug. 27, 1856.
3 patented Sept. 9, 1856.
Recorded vol. 72, page 281.

A. B. STOUGHTON, *Ag't.*

Nov. 5, 1853.

30 *Imp't in repairing railway bars.*

Protest rec'd April 4, '53. Rej. on Richards forging mach., pat-ent'd Spt. 14, 1852, Aug. 9, 1853.

Received spec. and 1 drawing 5 Nov., '53. Stoughton.

Rej'd 2d time Sept. 21, '55.

Specf. and 1 draw'g to me 20 Nov. '55. Stoughton.

Letter J. McClellan Dec. 6, '55. See the protest in this file.

Jan'y 22, '56, interference decl'd with Jas. McLellan. Day of hearing 1st Monday of March.

Feb. 28, '56, day of hearing postponed to 2d Mond'y of April, '56.

Ap. 14, '5 , day of hearing postponed by stipulation to 1st Mond'y in May.

May 12, '56, decision in favor of Cawood. Limit of appeal 2d Monday in June. Notice to both parties sent this day.

June 5, '56, interf'e decl'd with H. Azzeltiyne. Day of hear'g 2d Mond'y in July. Both parties notified.

July 9, '56, postponed to 4th Monday in July. Notice sent.

July 30, '56, decision in favor of Cawood. July 31, notice to both parties. Limit of appeal 4th Mond'y of August.

(Here follows plan, marked original, page 31.)

32 SAMUEL H. TURRILL AND CHARLES WORMLEY
vs.
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

The United States of America, greeting, to the defendant and Messrs. Newberry, Pond, and Russell, your attorneys:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, 1862, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and district of Michigan, wherein the said Samuel H. Turrill and Charles Wormley are plaintiffs in error, and the said Michigan Southern and Northern Indiana Railroad Company is defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error men-

tioned, should not be corrected, and why speedy justice should
33 not be done to the parties in that behalf.

Witness the honorable Ross Wilkins, district judge of the district court of the United States for the district of Michigan, at Detroit, this 24th day of July, 1862.

ROSS WILKINS, *Dist. Judge.*

SAMUEL H. TURRILL AND CHARLES WORMLEY, pl'ffs in error,
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY, defendant in error.

DISTRICT OF MICHIGAN, *County of Wayne:*

DeWitt C. Holbrook, of said district and county, being duly sworn, doth depose and say, that on the thirty-first day of October, A. D. 1862, he served the above citation on the defendant by delivering a true copy of the same personally to Mr. Pond, of the firm of Messrs. Newberry, Pond & Russell, the attornies of record of said de-
34 fendant in error. D. C. HOLBROOK.

Sworn to and subscribed before me this 31st October, 1862.

JNO. WINDER,
U. States Commissioner for the District of Michigan.

35 No. 3926. Circuit court of the United States for the district of Michigan. Samuel H. Turrill & al. *v.* The Michigan Southern & Northern Indiana Railroad Company. Proof of service of citation. Filed in open court, Nov. 1, 1862.

WM. D. WILKINS, *Clerk,*
Per JNO. WINDER, *Dep'y Cl'k.*
D. C. HOLBROOK, *Att'y for Pl'ffs*

36 UNITED STATES OF AMERICA,
Circuit Court of the United States for the District of Michigan, ss:

SAMUEL H. TURRIL & CHARLES WORMLY
vs.
THE MICHIGAN SOUTHERN & NORTHERN INDIANA RAILROAD COMPANY.

I, William D. Wilkins, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record of judgment in the above-entitled cause; the same, having been carefully compared by me with such original, is a correct transcript therefrom and of the whole of such original record. And that the annexed bill of exceptions, citation, and proof of service thereof, are the originals filed in said cause.

In testimony whereof I have hereunto subscribed my name and
[SEAL] affixed the seal of said court, at Detroit, this nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh.

WM. D. WILKINS, *Clerk,*
By JNO. WINDER, *Deputy Clerk.*